IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9356 OF 2005

Khanderao Maruti Pawar
(since deceased) through LRs
Mr. Ramdas Khanderao Pawar
and anr. ..Petitioners

Vs.

Mandeppa Bandappa Kadadi
since deceased through his LR.
Mr. Megharaj Mandeppa Kadadi ..Respondent

Mr. Dilip Bodake for the petitioners.
Mr. M.R. Katikar for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : April 21, 2007.

ORAL JUDGMENT:

1. This petition challenges the decree of eviction passed by the learned Civil Judge, Junior Division at Madha on 27/9/1996 in Regular Civil Suit No. 213 of 1989 and confirmed by the learned VI Additional District Judge, Solapur vide his Judgment and Order dated 19/6/2001 in Civil Appeal No. 329 of 1996.

2. There is no dispute that the plaintiff is the landlord and the petitioners were impleaded as the defendants in RCS No. 213 of 1989 as they had taken on rent the suit premises i.e. two rooms bearing room no.45 on monthly rent of Rs.7/- and the tenancy used to commence from the first day of every month and ended on the last day of the month. Defendant nos.1 remained in arrears and it was also alleged that illegal construction was undertaken without seeking permission from the landlord. Eviction decree was, therefore, sought under Section 13(1)(b) of the Bombay Rent Act. The plaintiff had made complaints to various authorities about the said illegal construction and finally he approached the court.

3. In the Written Statement filed by the defendants, it was admitted that the construction was undertaken but it was not in the rooms taken on rent and it was in front of the said rooms. The defence taken by the defendants was more particularly on the point that though an additional room was constructed, it was in front of the tenanted rooms and it could not be treated to be an illegal construction carried out

in the suit premises.

4. The Court Commissioner was appointed and on visiting the suit premises, the Court Commissioner submitted his report at Exh.16. The Commissioner recorded a finding that in front of the suit rooms an additional room of 14 1/2 x 8 1/2 ft. with 8 ft. height was constructed in tin-sheet roof and on all four sides walls were constructed. This room was in the open space appurtenant to the suit premises. Mr. Bodake the learned counsel for the plaintiff advanced his argument only on the point that when an additional room was duly constructed in front of the suit premises, said construction would not come within the ambit of Section 13(1)(b) of the Bombay Rent Act. This submission cannot be accepted. The open space appurtenant to the suit premises is part of the tenanted premises and it has been admitted that an additional room was constructed without obtaining permission from the landlord. The trial court, therefore, held that the defendants were guilty of putting up permanent construction by way of an additional room in the open space, though the

plaintiff failed to prove that the defendants were in arrears of rent and that defendant no.1 sublet the suit premises to defendant no.2. The trial court passed the decree only on the ground of illegal/ unauthorised construction. The Lower Appellate Court, on reappreciation of the evidence, has agreed with the reasonings set out by the trial court in respect of its finding and confirmed the decree. Mr.Katikar the learned counsel for the respondents referred to the decision of this court in the case of Najama Gulab Bagwan and ors. vs. Laxmibai Rangildas Gujar since deceased by her heirs and LRs. Vinodkumar Rangildas Gujar and ors. **[2006 (1) Mh.L.J. 273]**. This court held that the permission of the landlord is a must for carrying out any repairs or putting up any permanent structure to the tenanted premises and if the tenant was found to be guilty of unauthorised permanent structure and/or repairs to the tenanted premises, the decree of eviction will be passed under Section 13(1)(b) read with Section 23 of the Bombay Rent Act. In the present case, as noted earlier, both the courts have concurrently held that the petitioners put up an additional room in front of the suit premises and in

the open space appurtenant to the same and hence the decree under challenge does not call for any interference under supervisory powers under Article 227 of the Constitution more so when the findings recorded by both the courts below concurrently cannot be termed as perverse of grossly erroneous.

5. Hence the petition fails and the same is hereby dismissed. Rule discharged. No order as to costs. This order will not come in the way of the landlord for taking out appropriate proceedings for recovery of the mesne profits or rent of the additional premises.

(B.H. Marlapalle,J.)